

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Plaintiff,

- against -

PLATFORM SOLUTIONS, INC.,

Defendant.

AMENDED CIVIL CASE
DISCOVERY PLAN AND
SCHEDULING ORDER

06 Civ. 13565 (CLB)

The following Amended Civil Case Discovery Plan and Scheduling Order is adopted, after consultation with counsel for the parties, pursuant to Rules 26(f) and 16 of the Federal Rules of Civil Procedure. Deadlines established in the Orders entered on June 14, 2007 and November 27, 2007 that have already passed are not repeated in this Order.

The case is to be tried to a jury.

1. On January 30, 2008, the parties shall complete and file a Joint Claim Construction and Prehearing Statement, which shall contain the following information:

a. The construction of those claim terms, phrases, or clauses on which the parties agree;

b. Each party's proposed construction of each disputed claim term, phrase, or clause, together with an identification of all references from the specification or prosecution history that support that construction, and an identification of any extrinsic evidence known to the party on which it intends to rely either to support its proposed construction of the claim or to oppose any other party's proposed construction of the claim, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses;

c. The anticipated length of time necessary for the Claim Construction Hearing;

d. Whether any party proposes to call one or more witnesses, including experts, at the Claim Construction Hearing, the identity of each such witness, and for each expert, a summary of each opinion to be offered in sufficient detail to permit a meaningful deposition of that expert; and

e. A list of any other issues which might appropriately be taken up at a prehearing conference prior to the Claim Construction Hearing, and proposed dates, if not previously set, for any such prehearing conference.

2. On March 3, 2008, IBM shall serve and file an opening brief and any evidence supporting its claim construction. On April 4, 2008, PSI shall serve and file its responsive brief and supporting evidence. On April 22, 2008, IBM shall serve and file any reply brief and any evidence directly rebutting the supporting evidence contained in an opposing party's response.

3. Fact discovery is to be completed by June 30, 2008.

a. Depositions shall proceed concurrently.

b. Whenever possible, unless counsel agree otherwise or the Court so orders, non-party depositions shall follow party depositions.

c. Paragraph 2 of the Stipulation on Deposition Procedures entered into on July 26, 2007 is amended as follows: (i) PSI and intervenor T3 Technologies Inc. will be considered to be one party for purposes of calculating the number of depositions available to "each party;" and (ii) Paragraph 2 shall read, "Each party may take the depositions of 25 fact witnesses employed by the opposing party, including inventors. Former employees represented by a party are included within this limitation." This change is without prejudice to any party's ability to seek leave of Court for additional depositions pursuant to Fed. R. Civ. P. 30(b)(2)(A).

4. Initial expert reports on issues on which each party bears the burden of proof to be served no later than July 31, 2008.

5. Expert rebuttal reports to be served no later than September 1, 2008.

6. All discovery is to be completed by October 17, 2008.

7. Dispositive motions to be served no later than September 15, 2008. Responses to dispositive motions to be served no later than October 15, 2008. Replies to be served by October 31, 2008. Each party may serve more than one dispositive motion and may serve such motions at any time.

8. Intervenor T3 shall be subject to and shall comply with all deadlines applicable to defendant PSI.

9. The parties have agreed that this case shall be ready for trial on all issues as soon after December 1, 2008 as the Court's schedule permits. The parties further agree that all claims that survive dispositive motion shall be tried in a single, non-separated proceeding. The parties currently estimate that six weeks of trial time, equally divided between IBM and PSI/T3, will be needed to try the case.

Joint Pretrial Order is required only if counsel for all parties agree that it is desirable, or the Court so orders.

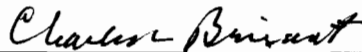
This case has been designated to the Hon. Mark D. Fox, United States Magistrate Judge at White Plains for discovery disputes if the Court is "unavailable" and for trial under 28 U.S.C. § 636(c) if counsel execute their consent in writing.

Strict compliance with the trial readiness date will be required. This Amended Plan and Order may not be changed without leave of the Court, except that upon signing a Consent for Trial Before a United States Magistrate Judge, the Magistrate Judge will establish an agreed date certain for trial and will amend this Plan and Order to provide for trial readiness consistent with that agreed date.

White Plains, New York

SO ORDERED

Dated: ~~February~~ *January 31*, 2008



Charles L. Bricant, U.S.D.J.